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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,581	02/26/2002	Yu-Cheun Jou	020278	8984
23696	7590	10/26/2010	EXAMINER	
QUALCOMM INCORPORATED			DADA, BEEMNET W	
5775 MOREHOUSE DR.				
SAN DIEGO, CA 92121			ART UNIT	PAPER NUMBER
			2435	
			NOTIFICATION DATE	DELIVERY MODE
			10/26/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/085,581	JOU ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BEEMNET W. DADA	2435	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 August 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-6,8-10,20,22-25,27-29 and 39-42 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1,3-6,8-10,20,22-25 and 27-29 is/are allowed.  
 6) Claim(s) 39-42 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

This office action is in reply to an amendment filed on August 12, 2010. Claims 1, 3-6, 8-10, 20, 22-25, 27-29 and 39-42 are pending.

### ***Response to Arguments***

Applicant's arguments, with respect to 35 USC 103(a) rejections of claims 1, 2-6, 8-10, 20, 22-25, 27-29 and 39-42 have been fully considered and are persuasive. The rejection of these claims under 35 USC 103(a) has been withdrawn.

Applicant's arguments with respect to 35 USC 101 rejections of claims 39-42 have been fully considered but they are not persuasive. Applicant argues that, claims 39 and 40 are directed to an apparatus and the claim is not required to explicitly recite hardware to constitute statutory subject matter. Applicant further argues that, claim 41 recites 'computer/machine readable medium' that is not directed to a signal. Examiner disagrees.

Examiner would point out that, the apparatus of claim 39 comprises a sequence generator, a scrambler. Such claimed apparatus may be interpreted either as software, hardware or combination thereof necessarily includes hardware, is interpreted in its broadest reasonable sense as software/code/instruction [in accordance with application's specification paragraph 1055]. Furthermore, claims 41 and 42 recite the limitation on a computer-readable medium storing instructions, which is not only limited to medium of a statutory type, is held nonstatutory. The claimed "computer/machine readable medium" must be physical structure, not a signal.

### **Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 39-42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 39 recites, “An apparatus for scrambling information bits in a communications system, the apparatus comprising: a sequence generator for...; a scrambler for .....”. The apparatus of claim 39 comprises a sequence generator, a scrambler. Such claimed apparatus may be interpreted either as software, hardware or combination thereof necessarily includes hardware, is interpreted in its broadest reasonable sense as software/code/instruction [in accordance with application’s specification paragraph 1055]. When software system/apparatus is claimed without including a machine or a physical part of the device within the meaning of 35 USC § 101, it is considered non-statutory. Explicit presentation of a hardware component/element, which falls within the statutory category of 35 USC § 101, in combination with the claimed apparatus would overcome the rejection.

Claim 40 recites, “An apparatus of unscrambling information bits in a communications system, the apparatus comprising: a sequence generator for....; an unscrambler for .....”.. The apparatus of claim 39 comprises a sequence generator, an unscrambler. Such claimed apparatus may be interpreted either as software, hardware or combination thereof necessarily includes hardware, is interpreted in its broadest reasonable sense as software/code/instruction [in accordance with application’s specification paragraph 1055]. When software system/apparatus is claimed without including a machine or a physical part of the device within the meaning of 35 USC § 101, it is considered non-statutory. Explicit presentation of a hardware component/element, which falls within the statutory category of 35 USC § 101, in combination with the claimed apparatus would overcome the rejection.

Claim 41 recites, “A computer program product, comprising: a computer-readable medium comprising code executable on at least one computer to cause the at least one computer to:....”. Claim 41 recites the limitation on a computer-readable medium storing instructions, which is not only limited to medium of a statutory type, is held nonstatutory [specification, paragraph 1057]. The claimed “computer/machine readable medium” must be physical structure, not a signal. In addition, transitory forms of signal transmission through transmission medium such as radio broadcast, electrical signals through a wire, and light pulses through a fiber-optic cable, are embodiments that are not directed to statutory subject matter because those transmissions convey only information encoded in the manner are transitory (*In re Nuijten* 84 U.S.P.Q.2d 1495). On the other hand, claim limitation that specifically recites the medium as non-transitory and statutory type while still according to the specification would overcome the deficiency.

Claim 42 have limitations that are similar to those of claim 41, thus they are rejected with the same rationale applied against claim 41 above.

### ***Allowable Subject Matter***

Claims 1, 3-6, 8-10, 20, 22-25 and 27-29 are allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BEEMNET W. DADA whose telephone number is (571)272-3847. The examiner can normally be reached on Monday - Friday (9:00 am - 5:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Y. Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Beemnet W Dada/  
Primary Examiner, Art Unit 2435  
October 21, 2010